



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 375

TUESDAY, MARCH 4, 2014

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 7, 2014
4:06 pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Adles

1 AN ACT authorizing associations and member underwriters authorized to transact
2 insurance in this state to also qualify as eligible surplus lines insurers.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔Section 1. KRS 304.3-070 is amended to read as follows:

5 (1) To qualify for and hold authority to transact insurance in this state, an insurer must
6 be otherwise in compliance with this code and with its charter powers, and must be
7 an incorporated stock or mutual insurer, or a combined stock and mutual life
8 insurer, or a reciprocal insurer, or Lloyd's plan insurer, of the same general type as
9 may be formed as a domestic insurer under this code, or an association, including
10 incorporated and individual unincorporated underwriters, meeting the
11 requirements of subsection (3) of this section, except that:

- 12 (a) No foreign insurer shall be authorized to transact insurance in this state which
13 does not maintain reserves as required by Subtitle 6 as applicable to the kind
14 or kinds of insurance transacted by such insurer, wherever transacted in the
15 United States; or which transacts business anywhere in the United States on
16 the assessment plan, or stipulated premium plan, or any similar plan;
- 17 (b) No insurer shall be authorized to transact a kind of insurance in this state
18 unless duly authorized or qualified to transact such insurance in the state or
19 country of its domicile;
- 20 (c) No insurer shall be authorized to transact in this state any kind of insurance
21 which is not within the definition as set forth in Subtitle 5;
- 22 (d) No such authority shall be granted or continued as to any insurer while in
23 arrears to the state for fees, licenses, taxes, assessments, fines or penalties
24 accrued on business previously transacted in this state;
- 25 (e) A combined stock and mutual life insurer must maintain separate accounting
26 for income, expenses, assets, liabilities and surplus funds allocated between
27 the "mutual" branch and the "stock" branch, in a manner as provided by a

1 regulation to be promulgated by the commissioner. The "mutual" branch shall
 2 not invest any moneys in equity securities of the "stock" branch, nor shall it
 3 loan any moneys to the "stock" branch. The "stock" branch shall not loan any
 4 moneys to the "mutual" branch; and

5 (f) A life insurer in forming the "stock" branch or the "mutual" branch of a
 6 combined stock and mutual life insurer, must possess the capital funds
 7 required pursuant to KRS 304.3-120 for the stock branch, and must possess
 8 the surplus funds required under KRS 304.24-100 for the mutual branch. The
 9 commissioner shall not grant a certificate of authority to any life insurer to
 10 conduct its business as a combination stock and mutual life insurer, unless the
 11 aforesaid capitalization requirements are fulfilled.

12 (2) In determining the solvency of or impairment to any foreign or alien insurer which
 13 is requesting the issuance or continuance of any certificate of authority to do
 14 business in this state, the commissioner may admit as assets only those items which
 15 would qualify as admitted assets for a domestic insurer similarly situated.

16 (3) To qualify for and hold authority to transact insurance in this state an
 17 association, including incorporated and individual unincorporated underwriters,
 18 in addition to meeting the requirements of subsection (1) of this section, shall
 19 have:

20 (a) Collective minimum capital and surplus equivalents, net of liabilities, on a
 21 several, not joint, basis of at least two-hundred fifty million dollars
 22 (\$250,000,000) and a central fund containing a balance of at least two-
 23 hundred fifty million dollars (\$250,000,000);

24 (b) The incorporated members of the association:

25 1. Shall not be engaged in any business, other than underwriting; and

26 2. Shall be subject to the same level of regulation and solvency control by
 27 the association's domiciliary regulator as are the unincorporated

members;

(c) An association, including incorporated and individual unincorporated underwriters that meet the requirement of this subsection shall not be deemed a Lloyd's plan insurer, as defined in KRS 304.3-040, and shall not be subject to the requirements of Subtitle 28 of this chapter; and

(d) The underwriting members of an association, including incorporated and individual unincorporated underwriters, that qualify for and hold authority to transact insurance in this state pursuant to this section, may also qualify as eligible surplus lines insurers pursuant to Section 3 of this Act.

➔Section 2. KRS 304.3-120 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, to qualify for authority to transact insurance (as defined in Subtitle 5), an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual, reciprocal, or Lloyd's insurer), and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

Stock Insurers		Foreign Mutual, Reciprocal, and Lloyd's Insurers	
Minimum		Minimum	
Required	Initial	Required	Initial
Capital	Free	Basic	Free
Stock	Surplus	Surplus	Surplus
\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000

- (2) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to July 15, 1982, may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock (if a stock insurer) or surplus

(if a mutual, reciprocal, or Lloyd's insurer) as required for such authority immediately prior to July 15, 1982. The commissioner shall not authorize such an insurer to transact any other kinds of insurance unless it then complies with the requirements as to capital and surplus. Notwithstanding the other provisions hereof, the exception provided in this subsection (2) shall cease to apply to any such insurer from and after the date upon which it has accumulated surplus in an amount equal to two hundred percent (200%) of the initial free surplus (if a stock or foreign mutual, reciprocal, or Lloyd's insurer) or the surplus (if a domestic mutual insurer) required under other provisions of this code to qualify for authority to transact the kind or kinds of insurance being transacted by it.

(3) Each insurer shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000). Insurers holding a valid certificate of authority to transact insurance in this state immediately prior to July 13, 1984, may, if otherwise qualified therefor, continue to be so authorized while possessing additional surplus as required for such authority immediately prior to July 13, 1984. The commissioner shall not authorize such an insurer to transact any other kinds of insurance unless it complies with this subsection. The exception provided in this subsection shall cease to apply to any insurer from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection. *This subsection shall not apply to an association qualifying pursuant to subsection (3) of Section 1 of this Act.*

(4) As to surplus required for authority to transact one (1) or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed shall be governed by Subtitle 24 of this chapter.

➔Section 3. KRS 304.10-070 is amended to read as follows:

(1) A broker shall place surplus lines insurance only with an insurer that he or she knows, or in the exercise of reasonable diligence could know:

1 (a) 1. Is authorized to write the type of insurance in its domiciliary
2 jurisdiction;

3 2.[(b)] Has capital and surplus or its equivalent under the laws of its
4 domiciliary jurisdiction that equals the greater of:

5 a. [1.] The minimum capital and surplus requirements set forth in KRS
6 304.3-120; or

7 b. [2.] Fifteen million dollars (\$15,000,000); and

8 3. [(e)] Is listed on the quarterly listing of alien insurers maintained by the
9 National Association of Insurance Commissioners, if the insurer is a
10 nonadmitted insurer domiciled outside of the United States; or

11 (b) Is an association, including incorporated and individual unincorporated
12 underwriters, that is authorized to transact insurance in this state pursuant
13 to subsection (3) of Section 1 of this Act, provided that the syndicates within
14 the association with whom surplus lines coverage is to be placed are listed
15 on the quarterly listing of alien insurers maintained by the National
16 Association of Insurance Commissioners. The association's authorized
17 status pursuant to subsection (3) of Section 1 of this Act shall not preclude
18 the association from also being an eligible surplus lines insurer pursuant to
19 this section.

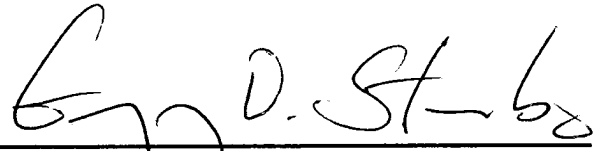
20 (2) A broker may:

21 (a) Place insurance covering certificates of investment with an insurance
22 company or guarantee fund which is financially sound and has capital funds
23 and reserves in excess of fifteen million dollars (\$15,000,000); and

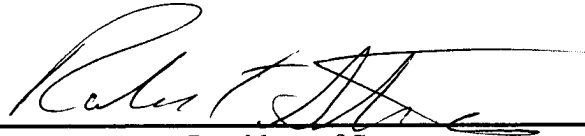
24 (b) Place insurance with a United States insurance exchange which the
25 commissioner, in his or her discretion, may designate for use by surplus lines
26 brokers licensed by the Commonwealth of Kentucky.

27 (3) The commissioner may declare that a surplus lines insurer is ineligible to transact

1 business in Kentucky. The commissioner shall promptly mail notice of all
2 declarations of ineligibility to each surplus lines broker if at any time the
3 commissioner has reason to believe that a surplus lines insurer no longer meets the
4 standards set forth in this subtitle.

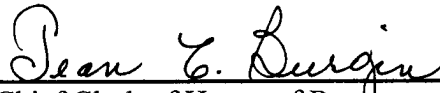


Speaker-House of Representatives



President of Senate

Attest:



Chief Clerk of House of Representatives

Approved



Governor

Date

4-7-14